

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

**UNITED STATES OF AMERICA for
the use and benefit of SPRINKLE MASONRY
INCORPORATED., a Virginia company,**

Use Plaintiff,

v.

Case No. _____

**AECOM CONSTRUCTION, INC.,
a Delaware company, and
FEDERAL INSURANCE
COMPANY, an Indiana company,**

Defendants

**COMPLAINT UNDER THE MILLER ACT, FOR BREACH OF CONTRACT
AND ON PAYMENT BOND**

COMES NOW Use Plaintiff Sprinkle Masonry Incorporated, ("Sprinkle"), by and through counsel, and for its Complaint in this matters, states as follows:

1. Sprinkle is a corporation organized and existing under the laws of the Commonwealth of Virginia having its principal place of business in Chesapeake, Virginia.
2. Upon information and belief, AECOM Construction, Inc. ("AECOM") is a corporation organized under the laws of the State of Delaware and having its principal place of business in Arlington, Virginia.
3. Upon information and belief, Federal Insurance Company ("Surety") is an Indiana corporation with its principal place of business in Whitehouse Station, New Jersey.
4. Jurisdiction is conferred upon this Court by the Miller Act, 40 U.S.C. §§ 3131 *et seq.*
5. Venue for this action properly rests in the Eastern District of Virginia, under the Miller Act, 40 U.S.C. §3133, providing venue in the United States District Court for the District in which the contract was performed.

FACTUAL AVERMENTS

6. AECOM entered into a contract with NAVFAC Midlant numbered N4008519D9066 for construction a construction project at the Naval Weapons Station Yorktown referred to as P995 (the Project).

7. Pursuant to 40 U.S.C. §3131, AECOM, as principal, and Surety executed Payment Bond Number 9000-0045 for the prompt payment of all persons supplying labor or materials used in the prosecution of the work at the Project (the “Bond”). A copy of the Bond is attached to this Complaint as Exhibit 1.

8. In connection with AECOM’s performance of the Project pursuant to its contract, it entered into a subcontract numbered 20S25977AU18 with Sprinkle (the “Subcontract”). A copy of the Subcontract is attached as Exhibit 2 to this Complaint.

9. Sprinkle completed all of its scope of work, plus all change orders to the subcontract in accordance with the contract documents.

10. During the course of the project, AECOM failed to pay the full amounts due on some payment applications submitted by Sprinkle.

11. The total amount unpaid from approved applications for payment that were not paid in full is \$137,801.01.

12. In addition to the applications which were not paid in full, AECOM has not been paid any amount for application number 21 for \$35,000.00.

13. The \$35,000.00 in application 21 is for change order 6 which was approved and executed by the parties on January 16, 2023.

14. As of the filing of this Complaint, there is not an open punch list or deficiency list that has been provided to Sprinkle for its work.

15. During the course of the project, due to the fault of AECOM and its

subcontractors, excluding Sprinkle, areas of the project were not available for Sprinkle to work in as scheduled.

16. Specifically, ACOM did not have the concrete wall in place because it could not get submittals approved.

17. The failure to have work areas available is a material breach of the Subcontract.

18. As a result of AECOM's material breach in not having work areas ready as scheduled Sprinkle incurred additional costs of \$1,303,687.02.

19. On May 22, 2023, Sprinkle gave notice to Surety of its claim under the bond and demanded payment for amounts owed and copied AECOM on the notice letter.

20. Sprinkle had previously made demand for payment on AECOM.

21. Although demand for payment has been made upon AECOM and Surety, Sprinkle has not been paid the balance due and owing for work performed on the Project.

22. The last date on which base contract labor was performed or materials supplied by Sprinkle was February 27, 2023.

23. This suit has been commenced within one (1) year from the date upon which the last of the labor was performed or materials supplied by Sprinkle.

24. The construction by Sprinkle was performed at Naval Weapons Station Yorktown.

25. Sprinkle is a proper claimant under the Miller Act and is entitled to the protection of the bond required under 40 U.S.C. §3131, *et seq.*

26. All conditions precedent to the filing and maintaining of this suit have been satisfied or waived.

COUNT ONE MILLER ACT

27. Sprinkle realleges and incorporates herein the allegations set forth above in Paragraphs 1 through 26 of its Complaint.

28. The failure of AECOM and the Surety to pay Sprinkle for work performed on the Project constitutes a violation of the Miller Act.

29. As a direct and proximate result of AECOM's and Surety's breach of the Miller Act, Sprinkle has been damaged in the amount of \$1,476,488.03, plus interest, costs and attorney fees pursuant to Subcontract § 6.10.

COUNT TWO ON PAYMENT BOND

30. Sprinkle realleges and incorporates herein the allegations set forth above in Paragraphs 1 through 26 of its Complaint.

31. The Bond issued by Surety is a valid and enforceable contract.

32. Sprinkle is an intended third-party beneficiary of the Bond.

33. Sprinkle is entitled to payment of its claim against the Bond pursuant to the terms of the Bond.

34. Surety's failure and refusal to pay for labor and materials supplied pursuant to the terms of the Bond constitutes a breach of the terms of the Bond.

35. As a direct and proximate result of Surety's breach of the terms of the Bond, Sprinkle has been damaged in the amount of \$1,476,488.03, plus interest, costs and attorney fees pursuant to Subcontract § 6.10.

COUNT THREE

BREACH OF CONTRACT

36. Sprinkle realleges and incorporates herein the allegations set forth above in Paragraphs 1 through 26 of its Complaint.

37. The Subcontract constitutes a valid and enforceable contract.

38. AECOM's refusal to pay Sprinkle amounts due for work performed under the Subcontract constitutes a material and substantial breach of that agreement.

39. As a direct and proximate result of AECOM's breach of the Subcontract, Sprinkle has been damaged in the amount of \$1,476,488.03, plus

interest, costs and attorney fees.

WHEREFORE, Sprinkle Masonry Incorporated, respectfully requests judgment be entered against AECOM and Surety in an amount of \$1,476,488.03, plus interest, costs and attorney fees pursuant to Subcontract § 6.10 and for such other and further relief as the Court deems just and proper.

SPRINKLE MASONRY INCORPORATED

/s/ Jesse B. Gordon _____

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